

## **CHAPTER 32-07.1 CRIME PROFITS RECOVERY**

### **32-07.1-01. Profits from the crime of a felon - Definitions - Action to recover profits from the crime - Violations - Remedies cumulative - Limitations of actions.**

1. As used in this section:

a. "Beneficiary" means:

- (1) A person who, under applicable law, other than the provisions of this section, has or had a right to recover damages from the convicted felon for physical, mental, or emotional injury, or pecuniary loss proximately caused by the convicted felon as a result of the crime for which the felon was convicted.
- (2) If a beneficiary has died, a person or estate that is entitled to recover damages.
- (3) If a person has died and the death was proximately caused by the convicted felon as a result of the crime for which the felon was convicted, a person described in chapter 32-21 or any beneficiary of a will of the decedent who had a right under that will to receive more than twenty-five percent of the value of the estate of the decedent.

b. "Beneficiary's interest in the profits from the crime" means that portion of the profits from the crime necessary to pay the following:

- (1) In the case of a beneficiary described in paragraph 1 or 2 of subdivision a, those damages which, under applicable law, other than the provisions of this section, the beneficiary has a right to recover from the convicted felon for injuries proximately caused by the convicted felon as a result of the crime for which the felon was convicted.
- (2) In the case of the beneficiary described in paragraph 3 of subdivision a, those damages which under all the circumstances of the case may be just.

c. "Convicted felon" means any person convicted of a felony, or found not guilty by reason of insanity of a felony committed in this state, either by a court or jury trial or by entry of a plea in court.

d. "Felony" means a felony defined by any North Dakota or federal statute.

e. "Profits from the crime" means:

- (1) Any property obtained through or income substantially related to the commission of a crime of which the defendant was convicted;
- (2) Any property obtained by or income substantially related to the sale, conversion, or exchange of proceeds of a crime, including any gain realized by the sale, conversion, or exchange; and
- (3) Any property that the convicted felon obtained or income substantially related to the commission of the crime, including any assets obtained through the use of unique knowledge obtained during the commission of, or in preparation for the commission of, the crime, as well as any property obtained by or income substantially related to the sale,

conversion, or exchange of such property and any gain realized by such sale, conversion, or exchange.

- f. "Representative of the felon" means any person or entity receiving profits from the crime by designation of the felon, or on behalf of the felon or in the stead of the felon, whether by the felon's designation or by operation of law.
2. All profits from the crime belonging to the convicted felon are subject to a constructive trust for the benefit of the beneficiaries set forth in this section. The trust continues until six years after the date of conviction. If an action is filed by a beneficiary to recover the beneficiary's interest in a trust within that time limitation, the trust character of the property continues until the conclusion of the action.
3.
  - a. Any beneficiary may bring an action against a convicted felon or representative of the felon to recover the beneficiary's interest in the trust established by this section.
  - b. The action may be brought in the district court where the beneficiary resides, where the convicted felon resides, or where the proceeds are located.
  - c. If the court determines that a beneficiary is entitled to profits from the crime pursuant to this section, the court shall order the payment from profits from the crime that have been received, and if that is insufficient, from profits from the crime that may be received in the future.
  - d. A beneficiary's interest in the profits from the crime must be reduced by the following amount:
    - (1) Money paid to the beneficiary as crime victims reparations under chapter 54-23.4 because of the crime for which the felon was convicted.
    - (2) Money paid to the beneficiary by the convicted felon because of a requirement of restitution imposed by a court in connection with the crime for which the felon was convicted.
    - (3) Money paid to the beneficiary because of a judgment against the convicted felon based upon the crime for which the felon was convicted.
  - e. In the case of an unsatisfied existing judgment or order of restitution against the convicted felon and in favor of a beneficiary, any money paid to the beneficiary pursuant to this section must be applied to reduce the amount of the unsatisfied judgment or order.
4. If there are two or more beneficiaries and the available profits from the crime are insufficient to pay all beneficiaries, the profits from the crime may be equitably apportioned among the beneficiaries taking into account the impact of the crime upon them. Twenty-five percent of the profits from the crime must be reserved for payment to the beneficiaries.
5.
  - a. The attorney general shall bring an action to require profits from the crime received by a convicted felon to be held in an express trust in a bank authorized to act as a trustee.
  - b. An action may be brought under this subdivision within six months after the receipt of profits from the crime by a convicted felon or six months after the date of conviction, whichever is later. The action must be brought in the district court for Burleigh County.

- c. If the attorney general proves that the profits from the crime are subject to a constructive trust pursuant to this section and that it is more probable than not that there are beneficiaries within the meaning of this section, the court shall order all proceeds deposited in a bank and held by the bank as trustee of the trust until an order of disposition is made by a court pursuant to subsection 4, or until the expiration of the period specified in subsection 2.
  - d. In any action brought pursuant to subsection 4 or 5, upon motion of a party the court shall grant a preliminary injunction to prevent any waste of the profits from the crime, if it appears that the profits from the crime are subject to the provisions of this section and that they may be subject to waste.
- 6. The remedies provided by this section are in addition to other remedies provided by law. No period of limitations, except those provided by this section, limits the right of recovery under this section.
  - 7. The offender or any person contracting with an offender shall notify the attorney general at least thirty days before the transfer of any profits from a crime. A person who willfully violates this subsection is guilty of a class A misdemeanor.
  - 8. Any contract between a convicted felon or representative of the felon and another person which provides for the payment of profits from a crime other than as provided by this section is void.